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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/573,933 | 11/20/2006 | Patricia A. Riley | 61284-0006 | 5408 |

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| EXAMINER | |
|---|---|
| DAVIS, DEBORAH A | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1655 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 01/09/2008 | ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

RLEAR@BDBLAW.COM
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| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/573,933 | RILEY, PATRICIA A. | |
| | Examiner | Art Unit | |
| | Deborah A. Davis | 1655 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *19 October 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/ are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

Applicants' response to the Office Action mailed on June 21, 2007 has been acknowledged. Currently, claims 1-15 are pending and under consideration. Claims 1-15 are currently amended.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-15 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 and 13-15 of U.S. Patent No. 6,602,526 for reasons of record.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are drawn to an oral composition comprising Lotus seed extract with a compatible vehicle for oral application. The extracts are

selected from various species of the Lotus plant such as Yellow Lotus, blue Lotus and Sacred Lotus and methyl donors. The extracts further comprises vitamins, minerals, antioxidants, amino acids and hormones.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Patricia A. Riley (US2002/0098253) for reasons of record.

The reference of Riley beneficially teaches therapeutic oral and topical compositions of Sacred Lotus Seed (Methyltransferase) in dietary supplements in tablet form, which is a compatible vehicle for oral application. The composition combines Sacred Lotus seeds with additional antioxidants such as Vitamin E, and minerals such as copper, Iron and Manganese (paragraph 0072, Example 3 e.g.). One preferred composition combines the Sacred Lotus seed with glucosamine and cysteine (amino acid), plus antioxidants and vitamins A,C,E and other ingredients therein (paragraph 0061 e.g.). Other items include methyl donors one being lecithin, as claimed. Riley discloses that components such as L-isoaspartyl Methyltransferase and dopamine (hormone) are components naturally found in the Sacred Lotus Seed, and other parts of the plant (paragraph 0002 e.g.). The composition includes extracts from the seeds,

fruit, pithe, shell, stalk, leaves, roots, stemps pollen, carpels oval, and other plant parts. Some varieties of Sacred Lotus used in the dietary supplements include Blue Lotus, Yellow Lotus, and White Lotus (paragraph 0044).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a therapeutic Sacred Lotus Seed extract composition based upon the beneficial teachings provided by the cited reference, as discussed above. The adjustment of particular conventional working conditions is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of the evidence to the contrary.

***Response to Arguments***

Applicant's arguments filed October 19, 2007 have been fully considered but they are not persuasive.Applicant argues that the cited reference of Riley does not anticipate the claims because it does not teach the composition is in topical form nor does the reference teach extract of sacred lotus extract from the seed and the flower. Applicant also argues that the cited reference of Riley is not obvious over the instant claims for the same reasons. The examiner agree that the cited reference of Riley does not

expressly teach a topical form of the composition but however, Riley does teach that the compositions of lotus can be used concomitantly with the oral form of the compositions to get enhanced benefits (paragraph 0060, e.g.). The extracts of the lotus compositions are from the seeds, fruit, pithe, shell, stalk, leaves, roots, stemps pollen, carpels oval, and other plant parts as cited in the Office action above. Therefore, although the reference of Riley is not anticipated over the instant claims, they are deemed obvious.

With respect to the ODP rejection above, it will be maintained because although applicant has amended the instant claims to exclude oral compositions and currently to recite a topical composition of the lotus extract, the "526" patent teaches that the extract of lotus can be administered topically concomitantly with the oral forms of the compositions. Further, the extracts of the lotus compositions are from the seed and the flower of the lotus plants as claimed.

***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah A. Davis whose telephone number is (571) 272-0818. The examiner can normally be reached on 8-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Deborah A. Davis
Patent Examiner
Art Unit 1655
December 2007

CHRISTOPHER R. TATE
PRIMARY EXAMINER